

**§ 1.892-4T Commercial activities (temporary regulations).**

(a) *Purpose.* The exemption generally applicable to a foreign government (as defined in § 1.892-2T) for income described in § 1.892-3T does not apply to income derived from the conduct of a commercial activity or income received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity. This section provides rules for determining whether income is derived from the conduct of a commercial activity. These rules also apply in determining under § 1.892-5T whether an entity is a controlled commercial entity.

(b) *In general.* Except as provided in paragraph (c) of this section, all activities (whether conducted within or outside the United States) which are ordinarily conducted by the taxpayer or by other persons with a view towards the current or future production of income or gain are commercial activities. An activity may be considered a commercial activity even if such activity does not constitute the conduct of a trade or business in the United States under section 864(b).

(c) *Activities that are not commercial—*  
(1) *Investments—*(i) *In general.* Subject to the provisions of paragraphs (ii) and (iii) of this paragraph (c)(1), the following are not commercial activities: Investments in stocks, bonds, and other securities; loans; investments in financial instruments held in the execution of governmental financial or monetary policy; the holding of net leases on real property or land which is not producing income (other than on its sale or from an investment in net leases on real property); and the holding of bank deposits in banks. Transferring securities under a loan agreement which meets the requirements of section 1058 is an investment for purposes of this paragraph (c)(1)(i). An activity will not cease to be an investment solely because of the volume of transactions of that activity or because of other unrelated activities.

(ii) *Trading.* Effecting transactions in stocks, securities, or commodities for a foreign government's own account does not constitute a commercial activity regardless of whether such activities constitute a trade or business for pur-

poses of section 162 or a U.S. trade or business for purposes of section 864. Such transactions are not commercial activities regardless of whether they are effected by the foreign government through its employees or through a broker, commission agent, custodian, or other independent agent and regardless of whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. An activity undertaken as a dealer, however, as defined in § 1.864-2(c)(2)(iv)(a) will not be an investment for purposes of this paragraph (c)(1)(i). For purposes of this paragraph (c)(1)(ii), the term "commodities" means commodities of a kind customarily dealt in on an organized commodity exchange but only if the transaction is of a kind customarily consummated at such place.

(iii) *Banking, financing, etc.* Investments (including loans) made by a banking, financing, or similar business constitute commercial activities, even if the income derived from such investments is not considered to be income effectively connected to the active conduct of a banking, financing, or similar business in the U.S. by reason of the application of § 1.864-4(c)(5).

(2) *Cultural events.* Performances and exhibitions within or outside the United States of amateur athletic events and events devoted to the promotion of the arts by cultural organizations are not commercial activities.

(3) *Non-profit activities.* Activities that are not customarily attributable to or carried on by private enterprise for profit are not commercial activities. The fact that in some instances Federal, State, or local governments of the United States also are engaged in the same or similar activity does not mean necessarily that it is a non-profit activity. For example, even though the United States Government may be engaged in the activity of operating a railroad, operating a railroad is not a non-profit activity.

(4) *Governmental functions.* Governmental functions are not commercial activities. The term "governmental functions" shall be determined under U.S. standards. In general, activities performed for the general public with respect to the common welfare or

which relate to the administration of some phase of government will be considered governmental functions. For example, the operation of libraries, toll bridges, or local transportation services and activities substantially equivalent to the Federal Aviation Authority, Interstate Commerce Commission, or United States Postal Service will all be considered governmental functions for purposes of this section.

(5) *Purchasing.* The mere purchasing of goods for the use of a foreign government is not a commercial activity.

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**§ 1.892-5T Controlled commercial entity (temporary regulations).**

(a) *In general.* The exemption generally applicable to a foreign government (as defined in § 1.892-2T) for income described in § 1.892-3T does not apply to income received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity. The term “controlled commercial entity” means any entity engaged in commercial activities as defined in § 1.892-4T (whether conducted within or outside the United States) if the government—

(1) Holds (directly or indirectly) any interest in such entity which (by value or voting power) is 50 percent or more of the total of such interests in such entity, or

(2) Holds (directly or indirectly) a sufficient interest (by value or voting power) or any other interest in such entity which provides the foreign government with effective practical control of such entity.

For purposes of this paragraph, the term “entity” encompasses corporations and trusts (including pension trusts described in § 1.892-2T(c)) and estates.

(b) Entities treated as engaged in commercial activity—(1) *U.S. real property holding corporations.* A United States real property holding corporation, as defined in section 897(c)(2) or a foreign corporation that would be a United States real property holding corporation if it was a United States corporation, shall be treated as engaged in commercial activity and, therefore, is a controlled commercial entity if the requirements of paragraph

(a)(1) or (a)(2) of this section are satisfied.

(2) *Central banks.* Notwithstanding paragraph (a) of this section, a central bank of issue (as defined in § 1.895-1(b)) shall be treated as a controlled commercial entity only if it engages in commercial activities within the United States.

(3) *Pension trusts.* A pension trust, described in § 1.892-2T(c), which engages in commercial activities within or outside the United States, shall be treated as a controlled commercial entity. Income derived by such a pension trust is not income of a foreign government for purposes of the exemption from taxation provided in section 892. A pension trust described in § 1.892-2T(c) shall not be treated as a controlled commercial entity if such trust solely earns income which would not be unrelated business taxable income (as defined in section 512(a)(1)) if the trust were a qualified trust described in section 401(a). However, only income derived by a pension trust that is described in § 1.892-3T and which is not from commercial activities as defined in § 1.892-4T is exempt from taxation under section 892.

(c) *Control—(1) Attribution—(i) Rule.* In determining for purposes of paragraph (a) of this section the interest held by a foreign government, any interest in an entity (whether or not engaged in commercial activity) owned directly or indirectly by an integral part or controlled entity of a foreign sovereign shall be treated as actually owned by such foreign sovereign.

(ii) *Illustration.* The following example illustrates the application of paragraph (c)(1)(i) of this section.

*Example.* FX, a controlled entity of foreign sovereign FC, owns 20 percent of the stock of Corp 1. Neither FX nor Corp 1 is engaged in commercial activity anywhere in the world. Corp 1 owns 60 percent of the stock of Corp 2, which is engaged in commercial activity. The remaining 40 percent of Corp 2's stock is owned by Bureau, an integral part of foreign sovereign FC. For purposes of determining whether Corp 2 is a controlled commercial entity of FC, Bureau will be treated as actually owning the 12 percent of Corp 2's stock indirectly owned by FX. Therefore, since Bureau directly and indirectly owns 52 percent of the stock of Corp 2, Corp 2 is a controlled commercial entity of FC within the meaning of paragraph (a) of this section. Accordingly, dividends or other income received, directly